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Testimony of the Office of the Public Defender to the Senate Committee on the Judiciary re: S.B. 280: RELATING TO HIGHWAY SAFETY

Chair Sen. Karl Rhoads, Vice-Chair Sen. Mike Gabbard and Members of the Committee:

The Office of the Public Defender respectfully **opposes SB 280**.

SB 280 proposes to add the following language to HRS section 707-705 (Negligent Injury in the First Degree) by adding subsection (c) to read: "Bodily injury to another person by operation of a vehicle in a negligent manner while under the influence of alcohol or drugs".

The OPD believes that this addition would create several unexpected problems:

First, the term "bodily injury" as used herein and as defined in HRS section 707-700 means "physical pain, illness or any impairment of physical condition". This is a very low threshold for the commission of a class C felony (punishable by five years of incarceration), especially when used in conjunction with a "negligent" state of mind. The intentional, knowing or reckless infliction of "bodily injury" is considered an Assault in the Third Degree (see HRS section 707-712), which is a misdemeanor (punishable by one year of incarceration).

Second, the term "under the influence of alcohol or drugs" is not defined in HRS section 707-705. It is unclear if the term has the same meaning as that contained in HRS chapter 291E or a much lower threshold.

Thus, under SB 280, it is conceivable that a driver could have one alcoholic beverage, experienced a minor "fender bender", which caused mild transient pain to

another person and be arrested, prosecuted and convicted for Negligent Injury in the First Degree. SB 280, in a sense, criminalizes minor traffic accidents which result in minor injuries. It is the position of the OPD that said conduct and results are best left to civil adjudication. However, if the legislature believes that it is necessary to add language dealing with driving under the influence in conjunction with negligent injuries it should please consider the following:

The proposed language in SB 280 would better be placed in HRS section 707-706 Negligent Injury in the Second Degree, wherein the punishment would be consistent with the level of injury that is caused. Furthermore, the OPD would recommend that the term: “under the influence of alcohol or drugs” be defined as it is in HRS Chapter 291E for statutory consistency.

Thank you for the opportunity to comment on this measure.

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February 6, 2025
9:15 a.m.
State Capitol, Room 16 & Videoconference

S.B. 280
RELATING TO HIGHWAY SAFETY

Senate Committee on Judiciary

The Hawaii Department of Transportation (HDOT) **supports S.B. 280**, relating to highway safety. This proposed bill would amend the offense of negligent injury in the first degree to include injuries negligently inflicted by intoxicated drivers.

According to HDOT's annual Behavioral Survey:

13% of car drivers and 22% of pickup truck drivers admitted to driving while feeling buzzed in the past six months. In addition, 24% of passengers of motor vehicles witnessed the driver of the vehicle they were in looked buzzed or admitted to feeling buzzed.

According to the National Highway Traffic Safety Administration (NHTSA), in 2022 Hawaii experienced 37 alcohol-impaired driving fatalities (BAC .08+), which were all 100 percent preventable. Additionally, 2023 preliminary state data shows that 49 of the 117 (42 percent) drivers involved in a fatal crash tested positive for alcohol and/or drugs.

Increasing the penalty for intoxicated drivers involved in a crash resulting in injury to another person, will serve as an additional deterrent to those drivers who do not consider seriousness and potential harm impaired driving can cause to others.

We respectfully urge the Committee to pass this measure.

Thank you for the opportunity to provide testimony.

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**THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY
Thirty-Third State Legislature
Regular Session of 2025
State of Hawai'i**

February 5, 2025

RE: S.B. 280; RELATING TO HIGHWAY SAFETY.

Chair Rhoads, Vice Chair Gabbard, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney for the City and County of Honolulu submits the following testimony in **strong support** of S.B. 280. This bill is part of the Department's 2025 legislative package, and we thank you for hearing it.

S.B. 280 amends the crime of first-degree negligent injury to include bodily injury negligently inflicted by alcohol- or drug-impaired drivers. Currently, impaired drivers who actually injure others face the same petty misdemeanor penalty as any other impaired driver.

Alcohol compromises driving skill at even low levels of blood-alcohol concentration (BAC).¹ Research with driving simulators demonstrates inability to maintain consistent lane position at a BAC levels as low as 0.021%.² Several studies have consistently shown that both alcohol and other drugs significantly contribute to crash risk.³

Every injury caused by impaired drivers was completely preventable. The risks of driving while drunk or drugged have been well-known for decades. And the costs in deaths alone has been staggering. More Americans have died from drunk driving than in all our nation's wars combined.⁴

¹ E.J.D. Ogden & H. Moskowitz, *Effects of Alcohol and Other Drugs on Driver Performance*, 5 TRAFFIC INJURY PREVENTION 185, 186 (2004).

² Harriet Garrisson, et al., *Effects of Alcohol Intoxication on Driving Performance, Confidence in Driving Ability, and Psychomotor Function: A Randomized, Double-Blind, Placebo-Controlled Study*, 239 PSYCHOPHARMACOLOGY 3893, 3894 (2022).

³ Eduardo Romano, et al., *Drugs and Alcohol: Their Relative Crash Risk*, 75 J. STUDIES ALCOHOL & DRUGS 56, 61 (2014).

⁴ *Perez v. Campbell*, 402 U.S. 637, 657 (1971) (Blackmun, J., concurring) ("The slaughter on the highways of this Nation exceeds the death toll of all our wars.").

Because of this danger, every state has already decided that civil penalties alone are insufficient to deter drunk driving. Within this class of offenders, those drivers who actually cause collisions—collisions leading to physical injury—are the most dangerous.

Under S.B. 280, the prosecution would not secure a conviction simply by proving an impaired driver was involved in a collision. Even proof of injury to the other driver would not suffice. As with all criminal cases, the prosecution must prove the causal link between the defendant's actions and the result.⁵ In other words, the State must show that had the defendant not driven drunk or impaired, the other person would have remained free of injury. Felony sentencing is entirely appropriate in such cases.

Finally, the phrase “under the influence of alcohol or drugs” should remain unaltered in the bill. Its equivalent appears in the first-degree negligent homicide statute.⁶ Uniform phrasing ensures that first-degree negligent injury remains a lesser-included offense of first-degree negligent homicide.⁷

By contrast, HRS § 291E-61 defines the offense of operating a vehicle under the influence of an intoxicant as follows:

A person commits the offense of operating a vehicle under influence of an intoxicant if the person operates or assumes actual physical control of a vehicle:

- (1) While under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty.”
- (2) While under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner[.]⁸

In cases of negligent collision, this is redundant: a negligent collision already demonstrates impairment of normal mental faculties, inability to guard against casualty, and inability to operate a vehicle in a careful and prudent manner. Rather than cross-referencing another statute, this Committee should retain similar phrases used in Part II of Chapter 707.

The Department strongly encourages passage of S.B. 280.

Thank you for the opportunity to testify.

⁵ HRS § 701-114(1)(a) (conviction requires proving every element of an offense beyond reasonable doubt); § 702-205(1) (including conduct and the results of conduct as elements of an offense); § 702-214 (defining causal relationship between conduct and results).

⁶ See HRS § 707-702.5(1)(a) (“A person commits the offense of negligent homicide in the first degree if that person causes the death of [a]nother person by the operation of a vehicle in a negligent manner while under the influence of drugs or alcohol.”).

⁷ See HRS § 701-109(4)(a) (“A defendant may be convicted of an offense included in an offense charged in the felony complaint, indictment, or information. An offense is so included when [i]t is established by proof of the same or less than all the facts required to establish the commission of the offense charged[.]”).

⁸ HRS § 291E-61(a)(1)-(2).